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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER

SUBRAMANIAN, NARAYANSWAMY

ART UNIT	PAPER NUMBER
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3624

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Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

1. This office action is in response to applicants' communication filed on January 20, 2006. Amendments to claims 1, 62, 76, 83 and 90 and cancellation of claims 2-8 and 10-15 have been entered. Claims 1, 62-72 and 74-96 are pending in the application. Rejections made under 35 USC 112, second paragraph have been withdrawn in view of the amendments. Claims 1, 62, 65-69, 74-85 and 90-92 have been examined. The rejections and response to arguments are stated below.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting

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ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of copending Application No.09/609,228.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they recite essentially the same features of facilitating a transaction between a buyer and a seller using an electronic network system.

Claim 2 of '228 recites all the features of claim 1 of the instant invention except the step of completing the sale of the product or service in response to an acceptance of an offer by a buyer within a predetermined period of time. This step is old and well known to one of ordinary skill in the auction art. The purpose of making the offer is to complete the sale upon receipt of an acceptable bid within a predetermined period of time. Hence it would have been obvious to one of ordinary skill in the art to include this feature to claim 2 of '228.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 62, 65, 68, 69 and 90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odom et al (US Patent 6,058,379).

Claim 1, Odom teaches a method of making a sale offer over an electronic network system, comprising the steps of: randomly generating an offer to purchase a product or service on the electronic network system at an offer price (See Odom Column 3 lines 20-26); communicating the randomly generated offer through the electronic network system at an unknown start time and for a predetermined duration of time to one or more potential buyers connected to the electronic network system (See Odom Column 3 lines 20-26, Column 5 lines 22-25, lines 46-50 and claim 1, unknown start time is interpreted to mean unknown start time to the buyer); completing the sale of the product or service through the electronic network system in response to an acceptance of the offer by a buyer within the predetermined period of time (See Odom Abstract and Column 3 lines 43-46); and removing the offer from the electronic network system should the buyer not accept the offer within the predetermined period of time (See Odom Column 5 lines 33-38, Column 6 lines 59-63, Column 8 lines 21-23, lines 25-26 and Column 9 lines 65-67). Posting information on the Web and sending e-mail to notify implies displaying at an unexpected period of time.

Odom does not explicitly teach an offer price that is substantially equal to a delivery price associated sending the offered product or service to the buyer, the delivery price being less than a current value of the offered product or service in a competitive market.

Official notice is taken that the step where an offer price is substantially equal to a delivery price associated with the transaction, the delivery price being less than a current value of the offered product or service in a competitive marketplace is old and well known. For instance when companies like Dell Computers offer their products on sale over the Internet they also offer free delivery of the product. The sale price is below the normal retail price of the product and with free delivery the offer price is less than a current value of the offered product in a competitive marketplace. Such offer prices are an incentive for the customers to purchase the products during the time when the promotion is on.

It would have been obvious to one of ordinary skill in the art at the time of invention to modify Odom to include these steps. The combination of disclosures suggests that buyers would have benefited from price incentives offered by the seller.

Claim 62, Odom teaches a method of making a sale offer over an electronic network system, comprising: randomly displaying at least one offer to accept a product or service at an offer price to a one or more potential recipients on the electronic network system (See Odom Column 3 lines 20-26) at an unknown start time (See Odom Column 3 lines 20-26, Column 5 lines 22-25, lines 46-50 and claim 1, unknown start time is interpreted to mean unknown start time to the buyer); providing an opportunity for the one or more potential recipients on the electronic network system to accept the at least one randomly displayed offer within a limited duration of time (See Odom Column 5 lines 12-25); receiving an indication of acceptance of the randomly displayed offer from the one or more potential recipients on the electronic network system (See Odom Column 6 lines 27-33); completing the sale of the product or service through the electronic network system in response to an acceptance of the offer by the one or more potential recipients on the electronic network system (See Odom Column 6 lines

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27-65); and removing the offer from the electronic network system should the one or more potential recipients not accept the offer within the limited duration of time (See Odom Column 5 lines 33-38, Column 6 lines 59-63, Column 8 lines 21-23, lines 25-26 and Column 9 lines 65-67). The seller can withdraw the offer anytime at seller's option, which includes removing the offer from the electronic network system should the one or more potential recipients not accept the offer within the limited duration of time.

Odom does not explicitly teach the step where an offer price is substantially equal to a delivery price of the offered product or service, the delivery price being less than a current value of the offered product or service in a competitive marketplace.

Official notice is taken that the step where an offer price is substantially equal to a delivery price associated with the transaction, the delivery price being less than a current value of the offered product or service in a competitive marketplace is old and well known. For instance when companies like Dell Computers offer their products on sale over the Internet they also offer free delivery of the product. The sale price is below the normal retail price of the product and with free delivery the offer price is less than a current value of the offered product in a competitive marketplace. Such offer prices are an incentive for the customers to purchase the products during the time when the promotion is on.

It would have been obvious to one of ordinary skill in the art at the time of invention to modify Odom to include these steps. The combination of disclosures suggests that buyers would have benefited from price incentives offered by the seller.

Claims 65, 68 and 69, Odom teaches randomly displaying a plurality of offers on the electronic network system during a predetermined period of time (See Odom Column 5 lines 45-56 and

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Column 10 lines 10-14); selecting one of a plurality of different types of product or services offered to the one or more potential recipients on the electronic network system (See Odom Column 5 lines 45-56, automatic identification implies this feature) and selecting one of a plurality of different types of products or services offered based on a profile of the one or more potential recipients on the electronic network system (See Odom Column 5 lines 45-56, automatic identification and e-mailing implies this feature).

Claim 90, Odom teaches a method of randomly offering products or services over an electronic network system, comprising: a step for randomly displaying an offer to one or more potential recipients on the electronic network system to accept a product or service (See Odom Column 3 lines 20-26), the randomly displayed offer having an unpredictable start time (See Odom Column 3 lines 20-26, Column 5 lines 22-25, lines 46-50 and claim 1, unknown start time is interpreted to mean unknown start time to the buyer); a step for providing an opportunity for the one or more potential recipients on the electronic network system to accept the randomly displayed offer within a predetermined duration of time (See Odom Column 5 lines 12-25); a step for receiving an indication of acceptance of the randomly displayed offer from the one or more potential recipients on the electronic network system (See Odom Column 6 lines 27-33); a step for completing the sale of the product or service through the electronic network system in response to an acceptance of the offer by the one or more potential recipients on the electronic network system (See Odom Abstract and Column 3 lines 43-46); and a step for removing the offer from the electronic network system should the one or more potential recipients not accept the offer within the predetermined duration of time (See Odom Column 5 lines 33-38, Column 6 lines 59-63, Column 8 lines 21-23, lines 25-26 and Column 9 lines 65-67). The seller can withdraw the offer anytime at seller's option, which

includes removing the offer from the electronic network system should the one or more potential recipients not accept the offer within the limited duration of time.

Odom does not explicitly teach an offer price substantially equal to zero plus a cost associated with shipping the product or service to the buyer.

Official notice is taken that the step where an offer price is substantially equal to zero is old and well known. For instance companies that are about to liquidate their inventories offer prices that are substantially equal to zero in order to liquidate their inventories quickly. Merchants also announce offers of some products for free (for a limited time while quantities last) to attract customers to their store (where customers usually end up purchasing other goods at regular prices). The only significant cost to the buyer is cost of shipping and handling. Such offer prices are an incentive for the customers to purchase the products during the time when the promotion is on.

It would have been obvious to one of ordinary skill in the art at the time of invention to modify Odom to include this step. The combination of disclosures suggests that buyers are benefited from price incentives offered by the seller.

6. Claims 74-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odom et al (US Patent 6,058,379) in view of Conklin et al (US Patent 6,141,653).

Claim 74, Odom teaches a method of claim 62 as discussed above including a first indication of acceptance from the buyer in response to the random display of the at least one sale offer (See Column 6 lines 27-33), negotiation between the seller and the buyer (See Odom Column 6 lines 11-19) and clearing the transaction (Column 3 lines 43-46 and Column 7 lines

56-60) and requesting delivery of the offered product or service to the buyer (inherent in the disclosure of Odom).

Odom does not explicitly teach the steps of displaying at least one term associated with the at least one randomly generated sale offer in response to the first indication of acceptance; receiving a second indication of acceptance from the buyer in response to the display of the at least one term associated with the at least one randomly generated sale offer; displaying an acceptance form to the buyer in response to the second indication of acceptance from the buyer; receiving a third indication of acceptance from the buyer in response to the display of the acceptance form for forming a purchase agreement concerning the offered product or service; displaying at least one payment method option in response to the third indication of acceptance; receiving at least one payment method selection from the buyer in response to the display of the at least one payment method option; and transferring a sum corresponding to the selected payment method from the buyer to the seller.

Conklin teaches the steps of iteratively negotiating multiple variables, documenting the transaction, providing payment options and transferring the payment amount online (See Conklin Column 14 lines 3-31 and lines 63-65). These steps are common in trading between two parties to a transaction. The disclosure of Conklin is interpreted to include the features of displaying at least one term associated with the at least one randomly generated sale offer in response to the first indication of acceptance; receiving a second indication of acceptance from the buyer in response to the display of the at least one term associated with the at least one randomly generated sale offer; displaying an acceptance form to the buyer in response to the second indication of acceptance from the buyer; receiving a third indication of acceptance from the

buyer in response to the display of the acceptance form for forming a purchase agreement concerning the offered product or service; displaying at least one payment method option in response to the third indication of acceptance; receiving at least one payment method selection from the buyer in response to the display of the at least one payment method option; and transferring a sum corresponding to the selected payment method from the buyer to the seller.

Both Conklin and Odom are concerned with the problem of facilitating transaction between buyers and sellers of goods and services. It would have been obvious to one of ordinary skill in the art at the time of invention to modify Odom to include the teachings of Conklin. The combination of disclosures suggests that both parties to the transaction would have benefited from the smooth negotiations and conclusion of the transactions provided by the disclosures.

Claims 75-76, Odom teaches an offer price substantially equal to a delivery price associated with the sale offer transaction, the delivery price being less than a current value of the offered product or service in a competitive market and an offer price substantially equal to a delivery price associated with the sale offer transaction, the delivery price being less than a current price of the offered product or service in a competitive market (See discussion of claims 1, 62 and 90 above).

Claims 77-82, Odom teaches at least one payment method option comprises a credit card payment option or a cash-upon-delivery payment option (See Odom Column 12 lines 33-35); the step of withdrawing the at least one randomly generated sale offer in the event the potential recipient does not indicate acceptance within a predetermined period of time after the step of displaying the at least one randomly generated sale offer (See Odom Column 5 lines 33-38, Column 6 lines 59-63, Column 8 lines 21-23, lines 25-26 and Column 9 lines 65-67, the seller can withdraw the offer

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anytime at seller's option, which includes the event the potential recipient does not indicate acceptance within a predetermined period of time after the step of displaying); the step of withdrawing the at least one randomly generated sale offer in the event the potential recipient does not indicate acceptance within a predetermined period of time after the step of displaying the at least one term associated with the at least one randomly generated sale offer (See Odom Column 5 lines 33-38, Column 6 lines 59-63, Column 8 lines 21-23, lines 25-26 and Column 9 lines 65-67, the seller can withdraw the offer anytime at seller's option, which includes the event the potential recipient does not indicate acceptance within a predetermined period of time after the step of displaying the at least one term associated with the at least one randomly generated sale offer; the step of withdrawing the at least one randomly generated sale offer in the event the potential recipient does not indicate acceptance within a predetermined period of time after the step of displaying the acceptance form (See Odom Column 5 lines 33-38, Column 6 lines 59-63, Column 8 lines 21-23, lines 25-26 and Column 9 lines 65-67, the seller can withdraw the offer anytime at seller's option, which includes the event the potential recipient does not indicate acceptance within a predetermined period of time after the step of displaying the acceptance form); the step of withdrawing the at least one randomly generated sale offer in the event the potential recipient does not indicate acceptance within a predetermined period of time after the step of displaying the at least one payment method option (See Odom Column 5 lines 33-38, Column 6 lines 59-63, Column 8 lines 21-23, lines 25-26 and Column 9 lines 65-67, the seller can withdraw the offer anytime at seller's option, which includes the event the potential recipient does not indicate acceptance within a predetermined period of time after the step of displaying the at least one payment method option); and determining if a

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predetermined monetary amount is available to transfer from the potential recipient to the seller (See Odom Column 11 lines 23-27 and Column 12 lines 33-35).

7. Claims 66, 67, 83-85, 91 and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odom et al (US Patent 6,058,379) in view of Smith (US Patent 6,502,076 B1).

Claim 83, Odom teaches a method of randomly offering products or services over an electronic network system, comprising: randomly displaying an offer to one or more potential recipients on the electronic network system to accept a product or service (See Odom Column 3 lines 20-26), the randomly displayed offer having an unpredictable start time (See Odom Column 3 lines 20-26, Column 5 lines 22-25, lines 46-50 and claim 1, unpredictable start time is interpreted to mean unpredictable start time to the buyer); providing an opportunity for the one or more potential recipients on the electronic network system to accept the randomly displayed offer within a predetermined duration of time (See Odom Column 5 lines 12-25); receiving an indication of acceptance of the randomly displayed offer from the one or more potential recipients on the electronic network system (See Odom Column 6 lines 27-33); completing the sale of the product or service through the electronic network system in response to an acceptance of the offer by the one or more potential recipients on the electronic network system (See Odom Abstract and Column 3 lines 43-46); and removing the offer from the electronic network system should the one or more potential recipients not accept the offer within the predetermined duration of time (See Odom Column 5 lines 33-38, Column 6 lines 59-63, Column 8 lines 21-23, lines 25-26 and Column 9 lines 65-67). The seller can withdraw the offer anytime at seller's option, which includes removing the offer from the electronic network system should the one or more potential recipients not accept the offer within the limited duration of time.

Odom does not explicitly teach the steps wherein an offer price is substantially equal to zero and the step of providing a random frequency device for displaying the at least one sale offer in an unpredictable manner.

Official notice is taken that the step where an offer price is substantially equal to zero is old and well known. For instance companies that are about to liquidate their inventories offer prices that are substantially equal to zero in order to liquidate their inventories quickly. Merchants also announce offers of some products for free (for a limited time while quantities last) to attract customers to their store (where customers usually land up purchasing other goods at regular prices). Such offer prices are an incentive for the customers to purchase the products during the time when the promotion is on.

It would have been obvious to one of ordinary skill in the art at the time of invention to modify Odom to include this step. The combination of disclosures suggests that buyers are benefited from price incentives offered by the seller.

Odom does not explicitly teach the step of providing a random frequency device for displaying the at least one sale offer in an unpredictable manner.

Smith teaches the step of providing a random frequency device for displaying the at least one sale offer in an unpredictable manner (See Smith Column 6 lines 46-54 and Column 17 lines 17-20).

Both Smith and Odom are concerned with the problem of providing information to buyers to facilitate selling of goods and services. It would have been obvious to one of ordinary skill in the art at the time of invention to modify Odom to include the teachings of Smith. The

combination of disclosures suggests that sellers would have benefited from being able to target different buyers by randomly varying the times when products are offered.

Claims 66, 67, 84, 85, 91 and 92, Smith teaches controlling the frequency of randomly displaying the plurality of offers on the electronic network system (See Smith Column 2 line 63 – Column 3 line 5, the weighting factor controls the frequency); and increasing a number of unknown sale offer start times when a number of potential recipients on the electronic network system increases (See Smith Column 4 line 51 – Column 5 line 64 and Column 6 lines 30-65, tailoring the ads and specifying in the attract loop the weighting factor is interpreted to include this feature).

Response to Arguments

8. Applicant's arguments with respect to pending claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

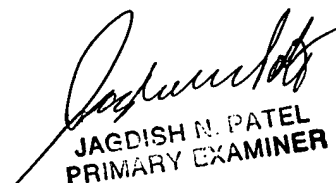
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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Narayanswamy Subramanian whose telephone number is (571) 272-6751. The examiner can normally be reached Monday-Thursday from 8:30 AM to 7:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached at (571) 272-6747. The fax number for Formal or Official faxes and Draft to the Patent Office is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PMR or Public PAIR. Status information for unpublished applications is available through Private PMR only. For more information about the PMR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dr. N. Subramanian N.S.
April 3, 2006


JAGDISH N. PATEL
PRIMARY EXAMINER
JAG
PRIMARY EXAMINER